

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**WESLEY MCANALLY, ON  
BEHALF OF HIMSELF AND ALL  
OTHERS SIMILARLY SITUATED,**

**PLAINTIFF**

**V.**

**ELITE FIBER, LLC, JOHN  
MUSCHALEK AND LINDA  
MUSCHALEK, INDIVIDUALLY,**

## DEFENDANTS

**CAN O. 5:24-cv-1393-JKP-HJB**

## PROPOSED SCHEDULING RECOMMENDATIONS

This case is pled as a collective action under the Fair Labor Standards Act (“FLSA”). Defendants Elite Fiber, LLC, John Muschalek and Linda Muschalek intend to oppose Plaintiff’s request that notice issue in this case.

Plaintiff Wes McAnally, on behalf of himself and all others similarly situated (“Plaintiff”) and Defendants Elite Fiber, LLC, John Muschalek and Linda Muschalek (“Defendants”) jointly recommend that the following deadlines be entered in a preliminary scheduling order, which shall control discovery concerning whether it is appropriate for notice to issue in this matter, and with the Court’s standard scheduling order to be entered once these notice issues have been determined.

These recommendations are made in light of the Fifth Circuit’s decision in *Swales v. KLLM Transp. Servs, L.L.C.*, which held that, when managing a putative FLSA collective action, “a district court should identify, at the outset of the case, what facts and legal considerations will be

material to determining whether a group of ‘employees’ is ‘similarly situated’ . . . [a]nd then it should authorize preliminary discovery accordingly.” 895 F.3d 430, 441 (5<sup>th</sup> Cir. 2021),

The Parties believe that future scheduling deadlines will be determined in large part by pre-notice discovery, as well as briefing concerning the appropriateness of granting Plaintiff’s Motion for Notice. Accordingly, the Parties believe that the most efficient manner to proceed would be to attend to class issues initially (Phase I discovery) and then to submit additional scheduling recommendations once class issues have been resolved (Phase II). Defendants further believe that basic discovery regarding the relevant “factors” in determining the existence of an employment relationship with Plaintiff and those allegedly similarly situated is appropriate for early discovery.

In that regard, the Parties propose that Phase I discovery, limited to the appropriateness of notice issuing in this matter, and basic facts of the relationship as they fit within the relevant “factors” in determining the existence of an employment relationship in the last 90 days from the date of the Court’s entry of the corresponding scheduling order.

The Parties further propose that Plaintiff’s Motion for Notice be filed within 105 days from the date of the Court’s entry of the corresponding scheduling order, with Defendants’ Response due 21 days after the date of Plaintiff’s Motion for Notice, and Plaintiff’s Reply due 7 days after the date of Defendants’ Response.

Therefore, the Parties respectfully request that the Court require that the Parties submit additional joint proposed scheduling recommendations, including deadlines for the items in the Court’s form scheduling order, not later than 15 days after either (1) the close of the class notice period, if any, or (2) the date the Court denies Plaintiff’s Motion for Notice.

Respectfully Submitted,

/s/ Douglas B. Welmaker

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**DESIGNATED E-SERVICE EMAIL ADDRESS**

The following is the undersigned attorney's designated e-service email address for all eserved documents and notices, filed and unfiled, pursuant to Tex. R. Civ. P. 21(f)(2) & 21(a) & Fed. R. Civ. P. 5: [NOTICE@RBLEGALGROUP.COM](mailto:NOTICE@RBLEGALGROUP.COM). This is the undersigned's only e-service email address, and service through any other email address will be considered invalid.

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing has been electronically served on all counsel of record via Notice of Electronic Filing through the CM/ECF system on May 13, 2025.

/s/ Douglas B. Welmaker  
Douglas B. Welmaker